

**REMARKS**

Claims 1-3 and 5-13 are pending in this application, with claims 8-13 being withdrawn. Claims 1-3 and 5-7 currently stand rejected, and claim 1 has been amended. Entry of the preceding amendments and withdrawal of the rejection under § 112 is respectfully requested in light of the preceding amendments and following remarks.

**Entry of Amendment Requested**

Applicants respectfully request entry of the above amendment to claim 1 after the closing of prosecution in the subject application, because the amendment places the claims in better form for appeal without changing the scope of the claims or necessitating any further search or consideration beyond the current rejections thereto. Specifically, the amendment to claim 1 clarifies that the measured second indicator - not the actual act of measurement - is not based on the first indicator. The Examiner has rejected the claims based only on the claim interpretation made explicit by this amendment. Office Action at 4. Thus, the Examiner need not re-search or reconsider the rejections based on the currently-applied art based on this amendment. Applicants respectfully submit that because the present amendment affects only the rejection under § 112 and thus clarifies issues for appeal without changing the scope of the claims, entry of the amendment under 37 C.F.R. § 1.116(b)(2) is permitted and respectfully requested.

Rejections under 35 U.S.C. § 112

Claims 1-3 and 5-7 stand rejected under 35 U.S.C. § 112, ¶¶ 1 & 2.

Specifically, the Examiner states that the amendment to claim 1 in Applicants' September 2, 2008 response can be interpreted such that the act of measuring a second indicator is independent from the first indicator of mastitis, whereas the specification discloses only the situation where the act of measuring a second indicator of mastitis is in direct response to the first indicator.

Applicants respectfully submit that claim 1 has been amended to clarify that it is only the second indicator of mastitis itself that is not based on the first indicator. For example, the second indicator measures a milk quality, such as calcium content, is not calculated from the first indicator, such as milk temperature. Support for this amendment is found in at least ¶ [0029] of the specification *as published*.

Because claim 1 as amended possesses written description support in the specification as filed and has a meaning ascertainable to one skilled in the art, claim 1 satisfies the requirements of § 112, ¶¶ 1 & 2. Withdrawal of the rejection to claims 1-3 and 5-7 under 35 U.S.C. § 112, ¶¶ 1 & 2 is respectfully requested.

Rejections under 35 U.S.C. § 103

Claims 1-3, 5, and 7 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over US Pat 5,704,311 to van den Berg ("van den Berg") in view of

Swedish Pat 200000179 to Birk ("Birk"). The Applicants respectfully traverse this rejection for the reasons detailed below.

With regard to claim 1, the Examiner alleges that van den Berg teaches each and every feature of this claim, with the exception of the "on-line cell counter for counting the number of cells" and first and second containers, for which Birk is applied. Applicants respectfully submit that Birk does not teach or suggest a "second indicator of mastitis includ[ing] analyzing at least a part of said first quantity of milk using an **on-line cell counter for counting the number of cells.**" Rather, Birk very briefly suggests only a measuring element that may be **flow sensor** or a **floating body** whose buoyancy indicates the quality of milk. See Birk, p. 4, ll. 2-6; p. 5, ll. 15-28; FIG. 1, element 25. A flow sensor and a floating body are not "on-line cell counters" and cannot measure cell counts of milk. Where Birk describes cell counts as an indicator of mastitis, it does not disclose any apparatuses capable of doing so, such as an on-line cell counter. See Birk, p. 4, ll. 8-14. Thus, Birk fails to teach or suggest the on-line cell counter of claim 1, which van den Berg also lacks.

Further, claim 1 has been amended to clarify that the **second indicator** of mastitis is "**not based on a milk quality measured by the first indicator.**" For example, the first indicator may measure milk conductivity and then the second indicator may measure cell count without measuring conductivity or calculating cell count from conductivity at all. Applicants respectfully submit that van den Berg fails to teach or suggest a second indication of mastitis, let alone one based on an independent milk quality. Instead, van den Berg

teaches only a conductivity test for determining mastitis. See van den Berg, Col. 8, ll. 25-28, 47-51. Van den Berg further teaches a milk flow cutoff threshold that is based on the results of the conductivity test. See van den Berg, Col. 8, l. 51 – Col. 9, l. 13. The flow cutoff threshold is **not a second indicator of mastitis**, and, even if van den Berg did use the flow cutoff as an indicator of mastitis, the cutoff is explicitly **based on the quality measured by the conductivity test**. See van den Berg, Col. 9, ll. 3-5. Thus, van den Berg does not teach or suggest the second indicator, let alone one measuring a second distinct milk quality as recited in claim 1.

Because van den Berg, alone or in combination with Birk, does not teach or fairly suggest multiple elements of claim 1, these references cannot anticipate or render obvious claim 1. Claims 2, 3, 5, and 7 are allowable at least for depending from an allowable base claim. Withdrawal of the rejection to claims 1-3, 5, and 7 under 35 U.S.C. § 103(a) is respectfully requested.

Claim 6 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over van den Berg in view of Birk and in further view of US Pat Pub 2004/0168643 to Nilsson ("Nilsson"). The Applicants respectfully traverse this rejection for the reasons detailed below.

Nilsson does not cure, nor does the Examiner apply Nilsson for curing, the disclosure and suggestion deficiencies of van den Berg and Birk, discussed above. Particularly, Nilsson is silent with regard to an on-line cell counter and two independent mastitis indicators. Because van den Berg, alone or in

combination with Birk and Nilsson, fails to teach or suggest each and every feature of claim 1, these references cannot anticipate or render obvious claim 1. Claim 6 is allowable at least for depending from an allowable base claim. Withdrawal of the rejection to claim 6 under 35 U.S.C. § 103(a) is respectfully requested.

**CONCLUSION**

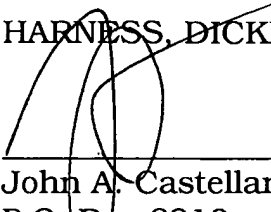
In view of the above amendments and remarks, the Applicants respectfully request allowance of claims 1-3 and 5-7. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is to contact John A. Castellano, Reg. No. 35,094, at the telephone number of the undersigned below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

HARNES, DICKEY, & PIERCE, P.L.C.

By

  
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